UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OHIO WESTERN DIVISION

2008 MAR 27 PM 3:26
TOLEDO

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| Tronsen | 3:08 CV 148 |
| v. | Judge Carr |
| Toledo-Lucas County Public Library | Brief |

This is a 42.1983 action against the defendants Toledo-Lucas County Public Library ('TLCPL' or 'defendant').

Plaintiff also asks Federal oversight against the TLCPL and defendants in a previous matter where Plaintiff says the state of Ohio courts did not sufficiently protect his civil (First and Fourteenth amendment) rights in a similar matter.

## FACTS:

This case presents because a patron of the ("Main" location of the) defendant TLCPL or 'defendant' complained to library staff regarding the contents of a note that Plaintiff produced & placed near the patron. Apparently the complaining patron found the contents offensive.

In addition, there was a previous incident at the Holland Branch of the defendant; Plaintiff was punished for leaving a 2 inch by 2 inch note ('sticky note') on a vehicle parked in the branch parking lot. This vehicle, bearing Utah license plates, had been observed in the library parking lot for a number of weeks before the note was left on it. The Holland note admonished the owner and-or operator to license the vehicle in Ohio, consistent with Ohio law. Plaintiff filed a lawsuit against those involved (Police, library, and staff), but this state action (Lucas County 02006 01131) was dismissed adversely to Plaintiff by Judge Thomas Osowik. Plaintiff appealed the dismissal, but no appeal was heard on the merits.

Plaintiff says in regard to this that the common law of a serious (non-frivolous) lawsuit is 'One trial, one appeal'. Plaintiff says that restrictions on speech and/or

mark anders tronsen, Pro Se

2132 Glenwood, Toledo, Ohio 43620

(419) 246.2791

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expression the bear on First and/or Fourteenth amendment freedoms are subject to the standard of strict scrutiny.

Plaintiff's complaint in the previous matter is mirrored in his theory of the instant matter.

Library staff identified the patron and followed up by barring the Plaintiff from the library premises for a period of 6 months.

The library cites their 'Code of Conduct' #18 ('Code') which reads:

> **"18. Verbal and/or physical harassment of staff or patrons to include but not limited to: using threatening language, stalking behavior, i.e., following persons on premises without their permission: staring or watching persons in a manner which could reasonably be construed as threatening."**

**PLAINTIFF RESPECTFULLY REMINDS THE COURT THAT THIS PROVISION DOES NOT MENTION ANYTHING REGARDING PRODUCING OR DISTRIBUTING ANY WRITTEN MATERIAL(S).**

Plaintiff says:

**A) This provision does not include (even reference to) the conduct complained of.**

B) The Code does not specifically name or specify in its language to give an individual of common intelligence notice that the complained conduct was prohibited (either Under-inclusive or Overbroad as applied in our case) .

In Other Words, Plaintiff complains that this application and/or the facial wording of the Code is overbroad – or was overbroadly applied.

C) The enforcement against this conduct was an infringement of Plaintiff's First and Fourteenth amendment rights, to wit:

Plaintiff says that the long, clear if not overwhelming established law of the United States is that communication cannot be restricted by government in public places unless the communication (speech, expression) is 'unprotected speech'. Plaintiff says that by default, speech is protected unless it falls into specifically defined category - circumstances:

1) Speech with a message that is a clear and present danger to the state or to a hearer.

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(419) 246.2791

This category has been previously well defined in law; it does not include speech or a message that is merely annoying or offensive. The danger must present directly to those hearing the message; while it is most often spoken, it could present in the form of a written communication hypothetically such as: (in the presence of an intended victim) "I have sufficient means [weapon or weapons], and lets harm (the victim)" thereby incites an act of violence against another. Another example could be displaying a container of gasoline and saying to an excited crowd something like: "Let's go Right Now and burn down the abortion clinic". Plaintiff says like utterances would not be protected speech, same as the oft-repeated Shouting "Fire" in a crowded theater (when there is no fire).

2) Is Obscene, which Plaintiff needs not define here.

Plaintiff says that (the contents of) both of his notes mentioned was protected speech.

D) Plaintiff says that the banishment the library wishes to impose is in fact, a punishment. Plaintiff says the library is not legally empowered by Ohio law to impose-enforce the penalty asked against Plaintiff in this matter.

**Plaintiff has known of the following events being hosted on the premises of the TLCPL within the last 3 years:**

**At the Holland Branch:**

- The treasurer of the Springfield schools held a discussion of school finances where the public gave input.
- Signatures were gathered regarding an initiative to the General Assembly

**At other locations:**

- The city of Toledo held a public discussion regarding a 'Costco' store.
- The University of Toledo held an open house
- Caroline Kennedy, daughter of the late President John F Kennedy endorsed a candidate for nomination for political office.

**THE INTER-ACTION BETWEEN PLAINTIFF & THE LIBRARY COMPLAINANT ONLY LASTED ABOUT 5 SECONDS; THERE WAS NO PHYSICAL CONTACT INVOLVED. THERE WAS NO VERBAL OR PHYSICAL ABUSE OR HARRASSMENT.**

**Discussion:**

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(419) 246.2791

Defendants wish to avoid having their patrons harassed. While that certainly is a worth-while objective, we should make sure they're not overzealous and trample on the rights of those who wish to express protected thought, ideas, or messages.
I do not believe the library will argue that visitors don't often pass notes between themselves or carry on conversations regarding social matters. Such a claim would not have any credibility.

Harassment is by definition is a continuing if not persistent act; it cannot be slight, casual or transitory.[1]

## Argument:

All with respect to speech - expression or assembly on public property:
Courts have previously defined a bright line between messages - speech - or other expressive conduct as to being either (default) protected or not. This court need only apply previously established criteria to our cases to arrive at a judgment in favor of Plaintiff. The courts recognize two types of challenges to speech-expression restrictions: Facial, and As Applied.[2] Plaintiff says that by default, utterances in public places are protected; unprotected speech is/are the exception(s).
Plaintiff alleges that the library does not have legal authority to ban the Plaintiff from its premises.

### Precedential Cases:

**In Widmar v. Vincent**[3] the USSC said:
[it is a]" **fundamental principle that a state regulation of speech should be content-neutral.**"

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[1] Black's Law Dictionary

[2] Faustin v. City & County of Denver 423 F. 3d 1192 (2005)

[3] 454 U.S. 263 (1981)

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(419) 246.2791

In **Spence v. Washington**[4], a citizen was arrested & convicted of flag desecration* for superimposing a 'peace sign' over his own flag and displaying it in his window which could be observed by passers-by. The conviction survived until it reached the USSC where it was overturned-reversed. That court said:

**"We are also unable to affirm the judgment below on the ground that the State may have desired to protect the sensibilities of passersby. It is firmly settled that, under our Constitution, the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers."**

*note that this display occurred on private property

It cited an Iowa case: "Someone (in Newton) might be so intemperate as to disrupt the peace because of this display. **But if absolute assurance of tranquility is required, we may as well forget about free speech. Under such a requirement, the only 'free' speech would consist of platitudes. That kind of speech does not need constitutional protection.**" (emphasis added)(State v. Kool, 212 N.W. 2d., 518)

**Cohen v. California**:[5]
**"Gov't has no power to restrict expression because of its message, its ideas, its subject matter, or its content."**

**Collin v. Smith**:[6]
**"First Amendment rights are truly precious and fundamental to our national life."**

In a case involving literature at school, **Glasson v. City of Louisville**[7] , an appeals court said: **"Individuals (students) do not leave their Constitutional Rights at the** (schoolhouse) **door."**

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[4] 418 U.S. 405 (1974)

[5] 403 U.S. 13 (1971)

[6] 578 F. 2d 1197 (1978)

[7] 518 F. 2d 899

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2132 Glenwood, Toledo, Ohio 43620

(419) 246.2791

Plaintiff says this courts reasoning should transfer to our case, especially considering that library patrons are not legally required (as minors are to attend school), intimidated or coerced to be present (thereby students may require more protection from undesirable – 'disruptive' communications).
Plaintiff argues that the above refer to all speech & expressions upon publically owned or operated or maintained properties (in the Spence case, the flag was viewable from a public sidewalk).

**Winters v. New York:**[8]
**"The principle of a free press covers distribution as well as publication."**

Nevertheless, courts have fashioned a two-tiered distinction to how much variance in speech & expression are allowed. These are the 3 classifications of public properties:

- 'traditional public forum'. This refers to areas such as streets, parks, etc.
- A forum opened by (specific) action(s) of the government agency that owns or manages the property. This refers to any property where government has allowed discussions, debates, exchange of ideas, thoughts, or opinions to be spoken or expressed.
- A non-public property is a premises that is government owns (or manages) in which the members of the public have not been given express or implied permission to express views, opinions, communication(s), exchange messages, or other expressive conduct.

The only distinction in application is between the last and the first two; the law treats (either of) the first two identically.[9] Any one property (premises) could only be in one of the categories.

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[8] 333 U.S. 557 (1948)

[9] Perry Edun. Ass'n. v. PLEA 460 U.S. 37 (1983): "Although a State is not required to indefinitely retain the open character of the facility, as long as it does so it is bound by the same standards as apply in a traditional public forum."

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Plaintiff argues that the properties of the TLCPL which are open to the public fall into the second category, and attaches a partial list of expressive activities that Plaintiff is aware of (Appendix 1). Other properties and places such as warehouses, lunch rooms, or administrative offices on library property may or may not constitute or deserve public forum status.

The standard to be applied to restrictions on speech at public places is set at serious matters; threats coupled with capacity or obscenity. Government's role is NOT to protect its citizens from annoyances, trivial matters, or even slight inconveniences.
The cases with similar messages are almost too numerous to list, however Plaintiff attempts:

***"Freedom of press, freedom of speech, freedom of religion are in a preferred position."***[10]

"Although a municipality may enact regulations in the interest of the public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the constitution to those who wish to speak, write, print or circulate information or opinion. This freedom embraces the right to distribute literature. **The right of freedom of speech and press has broad scope."**[11] (emphasis added)

**"Purpose behind the Bill of Rights and of the first Amendment in particular is to protect unpopular individuals from retaliation – and their ideas from suppression – at the hand of an intolerant society."** [12]

**"The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views."**[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high

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[10] Jones v. City of Opelika 319 U.S. 105 (1943)

[11] Lovell v. Griffin, 303 U.S. 444 (1938)

[12] McCook v. Springer School Dist. 01-2157 10th circuit citing McIntyre v. Ohio Elections Comm. 514 U.S. 334 (1995)

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(419) 246.2791

purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech . . . is . . . protected against censorship or punishment, unless shown likely to produce a clear and present danger of a **serious substantive evil** that rises **far above public inconvenience, annoyance, or unrest. . . . There is no room under our Constitution for a more restrictive [372 U.S. 229, 238] view.** For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups." Terminiello v. Chicago, 337 U.S. 1, 4 - 5. As in the Terminiello case, the courts of South Carolina have defined a criminal offense so as to permit conviction of the petitioners if their speech "stirred people to anger, invited public dispute, or brought about a condition of unrest. **A conviction resting on any of those grounds may not stand.**" Id., at 5. The 14th Amendment does not permit a state to make criminal the peaceful expression of unpopular ideas."[13] (emphasis added)

Ownership of private property does not guarantee the absolute right(s) to dictate which speech is allowed, and which can be unilaterally prohibited.[14]
Indeed, the USSC has ruled that people may trespass unto private property to tender written (or spoken) messages.
Under certain, limited circumstances, greatly limited restrictions are allowed. These are circumscribed to strictly & highly limited matters.

**Carey v. Brown**:[15]

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[13] Edwards v. South Carolina, 372 U.S. 229(1963); Terminiello v. Chicago 337 U.S. 229(1949); also see DeJonge v. Oregon 299 U.S. 353

[14] Marsh v. Alabama 326 U.S. 501 (1946): 'company town' where Jehovah's Witnesses wanted to distribute literature & solicit membership. Ownership does not always mean absolute dominion. "The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

See also MARTIN v. struthers 319 U.S. 141 (1943)

[15] 447 U.S. 455 (1980)

mark anders tronsen, Pro Se
2132 Glenwood, Toledo, Ohio 43620
(419) 246.2791

**"It is well settled that the First and Fourteenth Amendments forbid discrimination in the regulation of expression on the basis of the content of that expression"... and "For the State to enforce a content-based exclusion it must show that its regulation is necessary to serve a compelling state interest and that it is narrowly drawn to achieve that end."**

**Virginia v. Black:**[16]

**"The First Amendment, applicable to the States through the Fourteenth Amendment, provides that "Congress shall make no law ... abridging the freedom of speech." The hallmark of the protection of free speech is to allow "free trade in ideas"-even ideas that the overwhelming majority of people might find distasteful or discomforting...**

**The First Amendment affords protection to symbolic or expressive conduct as well as to actual speech."**

the court found that cross -burning, by itself was a constitutionally protected expression; however, if it was tied with proof of intent to intimidate another, then it would be [not protected] illegal.

The USSC has even extended first amendment protection to nude dancing![17]

More Specific to our case: from **Bolger v. Young's Drug Products** :[18]

**"Inconvenience of having to dispose of unwanted paper is an acceptable burden at least so far as the Constitution is concerned. With respect to noncommercial speech, this Court has sustained content-based restrictions only in the most extraordinary circumstances. "**

**SUM UP:**

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[16] 538 u.s. 343 (2003)

[17] Schad v. Mount Ephraim 452 U.S. 61 (1981)

[18] 463 U.S. 60 (1983)

mark anders tronsen, Pro Se

2132 Glenwood, Toledo, Ohio 43620

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Plaintiff says his case will – must prevail because:
(All apply to Both the prior and the current-instant incident-matter-case).

a) The conduct Defendant says justifies their action was not specifically addressed in their 'Code of Conduct'.

b) Plaintiff says that even if included, the language was Unconstitutionally vague.

c) Plaintiff says that his conduct was below any reasonable threshold for being accurately legally considered to be harassment, even if harassment in & of itself was punishable.

d) Plaintiff says his conduct in both the prior and the instant cases was protected speech, and therefore his actions were not a proper reason-justification for punishment.

**e)** Plaintiff says that Defendants, by their own choices-actions-decisions, have made their premises to a 'public forum'.

Plaintiff includes his previously submitted pleadings by reference.

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mark anders tronsen, Pro Se
2132 Glenwood, Toledo, Ohio 43620
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